

1 *E-Filed 7/25/14*

2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN FRANCISCO DIVISION

6 WILLIE WEAVER,

7 Plaintiff, No. C 14-2905 RS (PR)

8 v.

9 WARDEN GREG LEWIS, et al., ORDER OF DISMISSAL;

10 Defendants.

11
12 **INTRODUCTION**13 This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983. A review of the
14 complaint under 28 U.S.C. § 1915A(a) shows that the claims are frivolous. Accordingly, the
15 action is DISMISSED with prejudice.16
17 **DISCUSSION**18 **A. Standard of Review**19 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
20 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
21 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
22 plausibility when the plaintiff pleads factual content that allows the court to draw the
23 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
24 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions
25 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from
26 the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).
27 Dismissal is appropriate when the complaint is “frivolous, malicious, or fails to state a claim
28 upon which relief may be granted.” 28 U.S.C. § 1915A(b). Dismissal under § 1915 forNo. C 14-2905 RS (PR)
ORDER OF DISMISSAL

1 frivolousness prior to service is appropriate where no legal interest is implicated, i.e., where a
2 claim is premised on an indisputably meritless legal theory or is clearly lacking any factual
3 basis. *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Cato v. United States*, 70 F.3d
4 1103, 1106 (9th Cir. 1995). If as a matter of law “it is clear that no relief could be granted
5 under any set of facts that could be proved consistent with the allegations,” *Hishon v. King &*
6 *Spaulding*, 467 U.S. 69, 73 (1984), “a claim must be dismissed, without regard to whether it
7 is based on an outlandish legal theory or on a close but ultimately unavailing one,” *Williams*,
8 490 U.S. at 327. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
9 essential elements: (1) that a right secured by the Constitution or laws of the United States
10 was violated, and (2) that the alleged violation was committed by a person acting under the
11 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

12 **B. Disposition**

13 Plaintiff claims that he has not received his shaving razors on some days. It is clear
14 that such claims are frivolous and that relief could not be granted under any set of facts that
15 could be proved consistent with the allegations. *Hishon*, 467 U.S. at 73. The claims are
16 DISMISSED with prejudice. Plaintiff’s application for leave to proceed *in forma pauperis*
17 (Docket Nos. 3 and 4) is DENIED because the action is frivolous. *Tripathi v. First Nat. Bank*
18 & *Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987). The Clerk shall terminate Docket Nos. 3 and
19 4, enter judgment in favor of defendants, and close the file.

20 **IT IS SO ORDERED.**

21 DATED: July 25, 2014



22 RICHARD SEEBOORG
23 United States District Judge

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